

[Mr. T. K. Velu Pillai.]

THE TRAVANCORE EZHAVA BILL.

PRESIDENT: We will now proceed with the discussion of the Ezhava Bill.

MR. T. K. VELU PILLAI: The question, Sir, is whether permission should be given to certain Ezhava *tarwads* to place themselves beyond the operation of one or two sections, which a considerable portion of the community feels that it cannot accept. We have heard arguments based on theories of right and those based on the practical side of difficulties in case we accept this amendment. In social legislation, Sir, we must not impress the opinion of the majority on the minority. I concede that the necessity for the present law is sought to be fortified by the argument that our opinion in this matter should be based on reason more than on sentiment. Reason is after all not an absolute standard especially in social and religious matters. The sentiments of the community depend more on tradition than on reason. To take an example, there is nothing which to a *marumakkathayam* male would appear so terrible as to entertain for a moment the idea of marrying his own sister's daughter. On the other hand, in certain *makkathaya* communities, the sister's daughter is the ideal bride. In the same manner, idolatry which is respected by a very good proportion of Hindus is, from the Christian and Mahomedan standpoints, a very absurd idea, a grotesque institution. Some ingenious persons may say that even our affection to parents is not supported by reason, because it may be argued that at the time a man married a woman the idea of children did not dictate such a course and that therefore it is not the duty of children to love and venerate parents. But we cannot consider these questions in such a narrow spirit. Domestic life in all communities depends upon the play of certain sentiments. The European, Sir, with all his rationalism and civilisation, finds it impossible to treat the Asiatic with perfect social equality, in spite of his cosmopolitanism and notwithstanding the fact that Christ came for all and died for all. It might be argued that the existence of numerous small States is likely to retard civilisation, but yet international morality respects maintenance of small States; so that human affairs and man-made laws are more matters of sentiment than of cold reason. I, therefore, welcome Mr. Subba Aiyar's amendment. It is a very innocuous one. It does not propose to trench upon the valued rights of the majority. He only wants to permit certain people who object to particular sections to exempt themselves from their operation. It does not cast any burden on those who do not want exemption. The difficulties that have been raised by some members of this House are more theoretical than practical, because the arguments advanced, *viz.*, that, if this amendment is accepted, *tarwads* will be ruined, that strangers will establish their position as members of *tarwads*, that revenue officers will try to do what they like with the family corporation—all these arguments will not command the approval of this House. With all the imperfections of our legislative and administrative machinery, I still think that the Government will be able

to obviate all these difficulties. Ezhava *tarwads* which do not want particular sections may be enabled to continue their sentiments and to act in the way most congenial to themselves so far as inheritance to property is concerned. However, the amendment has one defect. It has been freely conceded in the course of the discussion that *marumakkathayam* Ezhavas who come under the purview of this bill do not want such a section. The difficulty arises only in the case of the *misravazhi* Ezhavas. It is out of deference to the feelings and sentiments of certain *misravazhi* Ezhavas that we are now adopting this amendment. There has not been any suggestion that *marumakkathayam* Ezhavas want the exemption. I cannot, therefore, accept this amendment as it is. In consideration of the fact that protest has been made by the *marumakkathayees* for the adoption of the proposed clause, a qualification should be made so that this amendment will apply only to such *misravazhi* Ezhavas as demand it. Instead of saying 'Ezhava *tarwads*', I am for inserting '*misravazhi* Ezhava *tarwads*'.

MR. A. HOOGEWERF: While respecting the sentiments of the minority, should not the sentiments of the majority also be respected?

PRESIDENT: You are entering upon a disquisition on the rights of the majority and the minority. That is Mr. T. K. Velu Pillai's opinion. You may or may not accept it.

MR. T. K. VELU PILLAI: The wishes of the majority may be respected without prejudice to the minority.

MR. G. PARAMESVARAN PILLAI: I accept the principle of the amendment moved by Mr. Subba Aiyar as very reasonable and I hope this House will accept it.

MR. K. C. MAMMEN MAPPILLAI: I am not in favour of accepting the amendment moved by Mr. Subba Aiyar. I think it will be a serious obstacle in the path of the progress of this community, if this difficulty is also put in their way. No doubt, there is a large number of people now—I do not know the exact number, but still it has to be conceded that there is a large number of people—who would, for the moment, be glad if this amendment is accepted. But we have got the authority of Mr. Paramesvaran himself (and Mr. Subba Aiyar) that he did not want this amendment when it was offered by Mr. Subba Aiyar before the question came up for consideration. It was only on Mr. Subba Aiyar's own initiative—if I understood him correctly—without any prompting from Mr. Paramesvaran that the amendment has been introduced. No doubt there will be dissentients; but, as I said in another connection, no measure of this kind pertaining to the social conditions of a community can pass without challenge from one section or other. The question is whether, after making provision for such minor sections, the permanent interests of the community can be conserved and preserved. The experience of most of us with respect to the violation of social ideas is that what was considered to be indispensable yesterday comes to be regarded as positively injurious to-day. As an instance, it was pointed out that those who were appointed to the Ezhava

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Law Committee, by the time the deliberations of the committee were over, themselves changed their opinion and did not want the perpetuation of the *misradayam* system.

MR. M. GOVINDAN: I beg to say that that statement is not quite correct. Evidently Mr. Mammen Mappillai refers to the statement made by us, the three members of the *misradayam* community appointed to serve on the committee. We were unanimously of opinion that there must be *makkathayam*. Of course, we were by birth *misradayees*, but we were not appointed to represent *misradayam*.

PRESIDENT: He does not refer to that, Mr. Govindan. He says that some members on the committee were converted to *makkathayam*.

MR. M. GOVINDAN: We were not converted; but we were of that opinion from the very beginning.

MR. K. C. MAMMEN-MAPPILLAI: Thank you for it. I was of the idea that some of the members themselves changed their opinion.

Apart from this, I have come across persons who tell me that their views underwent a radical change in course of time. The leaders of the *misradayam* community—some of those who were supposed to represent *misradayam*—have themselves considerably modified their views, and they have said that they will not be sorry if *makkathayam* is passed. With regard to the *marumakkathayam* section of the Ezhava community, they should have greater repugnance to the passing of the law. At least theoretically, the *marumakkathayees* ought to be opposed to it. The *misradaya* people are practising, partly though, *makkathayam*. It stands to reason that their repugnance to the enactment of this measure cannot be so strong or so long-lived as the views of the pure *marumakkathayam* Ezhavas to the north of Quilon. If the *misra-vazhi* people have got a real grievance, as has been pointed out, they have the power of getting out of the difficulty by testamentary disposition. If we allow more than that, it will work serious hardship. As Mr. Govindan pointed out yesterday, there will be a minority who would be quite against it. There will be a majority who would want it. The minority will say that it will work a real hardship on them. This ought to be seriously taken into account. Therefore, beyond giving them full and adequate liberty for testamentary disposition, it will be, in my opinion, very deleterious to the permanent interests of the community, if the majority, irrespective of the wishes, sentiments and feelings of the minority, were allowed to declare themselves *misradayees*. There are difficulties in every law; but, then, difficulties should not frighten us. As was pointed out by a great writer on social legislation, the instinct of self-preservation will be able to surmount all the possible difficulties. We may here note the fact that the *makkathayam* system is the prevailing system of inheritance throughout the world, and in future, in those communities where the *marumakkathayam* system still survives, every attempt will be made to get rid of it. There may

be honest reasons for following *maramakkathayam*; but still if this Council enables the few recalcitrant members of the community to impose the system upon the minorities who may not be in favour of the *misradayam* system, it will work hardship on the whole community.

MR. T. K. VELU PILLAI: I would request Mr. Mammen Mappillai to explain the meaning of the word 'recalcitrant'.

MR. K. C. MAMMEN MAPPILLAI: I think I have nothing more than the ordinary dictionary meaning.

MR. T. K. VELU PILLAI: I ask the meaning because the ordinary dictionary meaning is not applicable in this connection.

PRESIDENT: That is a matter of opinion. Perhaps Mr. Mammen Mappillai might not have used the proper word.

MR. J. JOHN NIDIRY: The amendment before the House is really perplexing to me, I find myself in a rather difficult position to say 'yes' or 'no', because, as you know, my view has all along been that individual partition as well as *makkathayam* is the proper legislation that ought to be given to Ezhavas at present. Anyhow, the policy adopted by the Law Committee as well as by the Select Committee, and to a great extent, the sense of the Council, as far as we have gone, seem to be a *via media*, a sort of conciliatory measure. Consistent with that policy, I should think that the amendment made by my learned friend Mr. Subba Aiyar is a reasonable one; because, if conciliation and slow progress should be the guiding principles in this piece of legislation, I think that conciliation should be extended to a few of our Ezhava brethren who are so very contentious and so very persistent to get at least themselves excluded from the operation of this bill which, they think, would be very dangerous to them. Though I am against it, the amendment seems to me reasonable.

MR. K. PARAMESVARAN PILLAI: Sir, I am sorry that I find myself unable to accept the new clause proposed by Mr. Subba Aiyar. I recognise that this exemption clause has been proposed merely out of Mr. Subba Aiyar's anxiety to meet the wishes of all classes of the community for whom this legislation is intended. Undoubtedly, it is a very legitimate desire; but it appears to me that it cannot be attained without grave inconvenience. The very fact that, in consideration of the wishes of an admitted minority, this exemption clause has been brought in, has created a sensation amongst the majority who desire to have no such exemption at all. There are two clauses in the bill to which this exemption clause would apply. They are the clauses relating to partition and intestate succession.

Taking the question of partition first, we have got the precedent of the Cochin Nair Regulation, in which an exemption clause of the kind now proposed has been provided; but, as has been admitted by Mr. Subba Aiyar himself, that regulation was passed more or less by the executive authority of the Government and had not the benefit of the searchlight of the criticism of a Council like this being thrown upon it. Therefore, that regulation in itself is defective in several respects; and many

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of the difficulties, which might have attracted the attention of the public, if the bill had been submitted to them for their opinion, escaped the notice of the Law Commissioners of Cochin. Therefore, various defects of a very serious kind have crept into that legislation and it appears to me that this exemption clause is one of them. It is proposed to exempt a *tarwad* if the majority of the members make a declaration before some officer that they do not want partition in their *tarwad* and that their *tarwad* should be maintained as an impartible one. As was pointed out here, a great difficulty would present itself in such cases. In the case of several *tarwads*, it is still unsettled as to who form the members of that *tarwad*. One *tarwad* may consist of several *thavazhees*. Some of them, as a matter of fact, may have in the past divided from it, but may not now admit that they are divided and may claim to be members of that *tarwad*. Others may be in the course of being divided and the rest may admittedly belong to the *tarwad*.

MR. N. PADMANABHA PILLAI: I wish to know whether he has not made a similar provision in the Nair Regulation Amendment Bill that he prepared.

MR. K. PARAMESVARAN PILLAI: Yes I had; but I am going to vote against it when it comes up. I had not the benefit of hearing the criticism of this measure when I included the clause in my draft bill.

MR. T. K. VELU PILLAI: I wish to know whether there was not a similar clause in Mr. K. P. Raman Menon's Bill introduced in the Madras Legislative Council.

MR. K. PARAMESVARAN PILLAI: There might have been. That does not affect the question at all. I know, in certain places particularly, this clause is likely to lead to incalculable mischief. For instance in Paravur, I understand, although there are over three hundred families, all of them claim to belong to four or five main *tarwads*. Each of these four or five *tarwads* has been divided and subdivided several times so that there is really no community of interest between the families. But there are very few registered deeds to evidence these partitions. Several of the divided branches do not admit that they have become divided from the main *tarwad*. This has led to several complicated law suits between the various branches. In such a case, how are we to apply the exemption clause? Are the Government to be given the power of deciding these questions which even baffle the ingenuity of experienced civil judges and lawyers? That is not an imaginary difficulty as thought by some of the members. It is a real difficulty and we must meet it before the clause is introduced into the regulation. Therefore, on that ground, if on no other, I object to the exemption clause in regard to partition. On principle also, it might be objected to; but that is a different matter.

Coming to the other aspect of the exemption, *viz.*, that relating to intestate succession, I submit that it is fraught with even greater difficulties and dangers. Now, it is the wish of the individual who has acquired the property that has to be taken into account and not the vote of the majority of the members of his *tarwad*, who may have no self-acquisition or separate property at all. Take, for instance, a *tarwad* of twenty members. One single member of the *tarwad* may have some self-acquisition and all the other nineteen members may expect to obtain one-half of the property. If that *tarwad* is given the right of exemption, are we to suppose that all the nineteen members of the *tarwad* should be given the right of disposal of this one man's self-acquired or separate property in preference to his own desire? So, what we have got to consult in such cases is the wish of the person who has acquired the property, and not the wishes of those persons who expect a share of the property after his death.

MR. T. K. VELU PILLAI: I wish to know whether the power of testation is not enough to help him to do as he wishes.

MR. K. PARAMESVARAN PILLAI: That is an argument which will cut both ways. He may use the power to give one-half of the properties to his sisters and nephews if he is not satisfied with the present law. Therefore, that is no argument at all. In matters of inheritance it is the wishes of the man who made the acquisition that ought to be taken into account and not those of others who expect to inherit a share of the property. In that case, there is no question of exempting *tarwads*. It must be a question of exempting individuals who have self-acquired property.

Coming to the exemption of individuals, the question is whether it is expedient or necessary. There are two ways of carrying out a man's intentions. He is given full testamentary power under this regulation; and if he is desirous of perpetuating *misradayam* he can execute a will and carry out his desire. If you cannot carry out a man's intentions in regard to his property without compelling him to do some overt act such as making a solemn declaration, why not leave him to avail himself of the Wills Regulation instead of creating a new form of testament? For, really you are doing that, when you provide for exempting individuals from the operation of the sections regarding intestate succession by forcing him to make a declaration. Therefore, so far as intestate succession is concerned, it appears to me to be inexpedient and wrong in principle to give *tarwads* the power of claiming exemption. So far as exempting individuals is concerned, it is superfluous in the light of the Wills Regulation.

In regard to partition, I have already submitted my reasons. I also submit that our anxiety to meet the wishes of all parties should not lead us to absurd situations. For these reasons, I oppose the amendment.

MR. N. KUMARAN: Sir, I oppose Mr. Subba Aiyar's amendment. In the first place, we have to examine whether there is any necessity for introducing this amendment in order to satisfy the wishes of a section of the *misradayees*. In order to examine this point, we will have to

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split up the amendment into its component parts. Mr. Subba Aiyar's amendment consists of two parts, the one relating to intestate succession and the other to the partition of *makkathayam* and *tarwad* property.

Taking the question of partition first, the House will remember that we have made provision in the bill only for *thavazhee* partition. Now, we find from the Law Committee's report that, practically speaking, there was unanimity of opinion amongst the witnesses examined in regard to *thavazhee* partition. Out of 802 witnesses examined, four alone said that they did not want any partition at all. If that is so, I believe even Mr. Rangaswami Aiyangar would be satisfied that we have reached in the matter of partition a degree of unanimity on which it would be absolutely safe to act. That being the case, I fail to see any necessity for this amendment. At the early stages of the agitation against the Law Committee's examination of witnesses, its proceedings and its report, there did not exist any appreciable volume of opinion against the provision of partition in the bill. No doubt, among *makkathayees* as well as among *misradayam* people, there was some opposition against individual partition. The modest provision made in the Ezhava bill did not satisfy the great majority of the partitionists as it did not go far enough. I, therefore, fail to comprehend the wisdom of the policy which has introduced this provision for exemption, so that even the very modest form of partition embodied in this bill may not have a universal application in the community.

Then, coming to the merit of the provision itself, as has been observed by Mr. K. Paramesvaran Pillai and other gentlemen who have already spoken on the subject, there will be considerable difficulty in going through the formalities and successfully effecting the exemption. Apart from this, there is another consideration which should also weigh with the House when voting for the amendment. Ordinarily, a *tarwad* consists of a number of *thavazhees*. Now, according to the amendment before the House, what Mr. Subba Aiyar proposes to do is to exempt certain *tarwads* from the partition chapter in the bill, if the majority of the adult members make an application for such exemption.

MR. P. K. NARAYANA PILLAI: May I know from whom this agitation to amend the law arose? Is it from the *misradayees*, the *marumakkathayees* or the *makkathayees*?

MR. N. KUMARAN: From *marumakkathayees* and *misradayees*, more especially from the latter. What I submit is that the provision in the amendment to exempt Ezhava *tarwads* in cases where the majority of the adult members of the *tarwads* claim exemption is open to serious objection. We have provided in the chapter on partition that a majority of the adult members of a *thavazhee* can claim partition. We have also provided, in the chapter on *tarwad* management, certain definite rights to *thavazhees*. There can be no doubt that these salutary provisions were adopted by this House on considerations of justice and

of a fair distribution of rights and responsibilities. The amendment now before the House practically amounts to negating that right given to the *thavazhees*. Therefore, even if we are to be consistent and logical, the provision ought to be that the majority of the adult members of each *thavazhee* might make an application for exemption. Otherwise, hard cases might arise. For example, a *tarwad* may consist, say, of three *thavazhees* of which one *thavazhee* may have ten adult members, and the other two, two or three each. It would be very easy then for the *thavazhee* which contains ten adult members—probably the senior male members of the *tarwad* including the *karanavan* may belong to this *thavazhee*—to impose their will upon the other *thavazhees* by making an application under this provision; so that members of one *thavazhee* will be able to impose their will upon the other *thavazhees* if it is advantageous to the former. What I, therefore, maintain is that, since the right of partition is given to *thavazhees*, the principle adopted in this amendment is inconsistent and unjust and should not be accepted.

Then, coming to the second part of the amendment, *viz.*, the question of *makkathayam*, various difficulties have already been pointed out by previous speakers. The great principle which is sought to be recognised by means of this amendment is that, in social legislation, a majority should not be permitted to impose its will upon an unwilling minority. In the example quoted by Mr. K. Paramesvaran Pillai, it is easy for the majority to impose its will upon the minority. My opinion is that the amendment is the very negation of the principle it is intended to establish. It is wrong in principle that a family should be exempted from the operation of a chapter relating to intestate succession when that chapter itself deals with the rights of individuals and not of families. Therefore it is inconsistent with the provisions of that chapter to enact a rule whereby groups of persons are entitled to claim exemption from this operation. Further, the question of intestate succession is, if I may say so, the bone of contention between the two parties, *viz.*, the one which wants exemption and the other which is opposed to that exemption. In fact, what those who want exemption ask for is that they should not have the right to give the whole of their earnings to the wife and children. They merely want to stick to the old rule of the wife and children succeeding only to a moiety of their self-acquisitions. It is, as has been pointed out already, very curious that that section of the people who have been giving at least one-half of their earnings to the wife and children should desire to remain in the same condition and not advance forward. It is clear from the evidence recorded by the Law Committee that the followers of the *marumakkathayan* system did not want any half-way house in *misrayadam*. They were almost unanimous in saying that they wanted only *makkathayam*. No doubt, it is not always easy for us to lightly brush aside considerations of sentiment which have grown up in the course of centuries. But we cannot ignore the fact that we are fast overcoming them and have assimilated different ideas of family rights and duties. There is also the full testamentary capacity provided in the bill which must suffice for cases of lingering sentiments.

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MR. T. K. VELU PILLAI: I wish to know if the testamentary power of an individual will be of any use in prescribing devolution of the *tarwad* common property.

MR. N. KUMARAN: That is, I think, beside the point. We are now considering the question of the devolution of self-acquired and separate property.

MR. T. K. VELU PILLAI: It is very important. If Mr. Kumaran will answer me, that would be of use in enabling me to vote.

PRESIDENT: He is dealing with self-acquired property.

MR. N. KUMARAN: In this connection, I should like to mention an incident which took place a few days back. A few of us were discussing the Ezhava Bill with a member of this House. A number of *misradayee* Ezhavas of Mr. Paramesvaran's persuasion then approached that member and placed their case before him. When their representation was over, I asked one of them whether he had any objection to give the whole of his acquisitions to his wife and children. He said he had absolutely no objection. This reply no doubt surprised us; but we soon understood that he, like most men of the same class, laboured under a mistake. They objected only to portions of their *tarwad* property being given to the wife and children. Probably, the opposition against the provision for intestate succession is more or less misguided. I am afraid the majority of the persons who have signed the memorials or have visited the members of this House on the Ezhava Bill might not have understood the real nature of these provisions. After all, the question of intestate succession is a very simple one. No sentiment is involved in it. There is no reason why, if a particular individual wants to dispose of his property as he likes, the rest of the community should suffer. If the *tarwad* has any interest in any property, the person in whose name it stands has no right to dispose of it as he likes. In that view of the matter also, the *tarwad* cannot suffer. To say that, if full right of devolution of property is given to its owner the Ezhava *tarwads* are going to suffer, is a view of things which cannot deserve serious notice in this House. There is absolutely no doubt that the ordinary tendency among Ezhavas as well as among members of other communities is to give whatever one has acquired to one's wife and children. But if anybody wants to give his property to his sister or her children or even to a neighbour, he may very well do so by a gift *inter vivos* or by exercising his testamentary power. As was pointed out by a previous speaker, even for obtaining exemption under this amendment, he has to do some overt act. If so, why could he not exercise his testamentary power and will away his property to the *anandaravan* without giving a copper cash or a cent of ground to his wife and children?

Taking all these into consideration, I am of opinion that this amendment is absolutely unnecessary. When clause 15 of the bill was being considered, Mr. Rangaswami Aiyangar brought in an amendment

to the same effect so far as intestate succession was concerned. This House rejected that amendment. Even Mr. Paramesvaran spoke against it. I do not think anything has transpired in the interval which should make us change our opinion. I therefore oppose this amendment with all the earnestness that I can command.

MR. JOSEPH PANJIKARAN: I support the amendment of Mr. Subba Aiyar. Here the conflict is between two schools of thought, one school desiring to have a change and the other school desiring to retain the existing state of things unaltered. One section of the Ezhava community wants to go much farther than it has at present in matters of inheritance. There is the other party, the *misravazhi* party, Mr. Paramesvaran's party, which wants to remain where it is. Which of these two parties should receive our support is the question with which the House is confronted. Of course, we all sympathize with the desire of those who try to advance in matters of social legislation; but at the same time I cannot sympathise with that spirit which says that the desire of those who like to be where they are should not be respected. In considering this question we have also to view it in another aspect. There is the difference between vested rights and desires. What the amendment says is that vested rights should be respected.

MR. N. KUMARAN: May I know what 'vested rights' are?

MR. JOSEPH PANJIKARAN: I am going to explain it. In the case of the *misravazhi* Ezhavas a portion of the property under the existing law goes to the children and the remaining portion goes to the *tarwad*. To this state of things, to this law of inheritance, the *misravazhi* Ezhavas have a vested right.

MR. N. KUMARAN: Is it a 'vested right' under any system of law?

MR. JOSEPH PANJIKARAN: I think so. Under the existing law, the property of a person, unless willed away by him, passes to a certain set of people—one-half to the people of his *tarwad*, and the other half to his wife and children. That is the existing state of things. My opinion is that, if the legislature wants to go forward and deviate from the existing state of things, and if a section desires—

MR. N. KUMARAN: I wish to know from Mr. Panjikaran whether the self-acquired property of an Ezhava becomes vested in any one before he dies.

PRESIDENT: I think he means potential right. He uses the expression 'vested' in his own way. That is his opinion.

MR. N. KUMARAN: He is a lawyer and therefore I thought he would use it in its technical sense.

MR. JOSEPH PANJIKARAN: I should like to say one word as regards the instance cited by Mr. K. Paramesvaran Pillai. He imagined the case of a family of twenty members, one of them alone having self-acquisitions, and the others having none and trying to impose their will on the other. In considering that question, we have also to bear in mind what is at present obtaining in the community and what

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they want to have in preference to it. Now that we are going to deviate from the existing state of things, I think it is necessary that we should consider the rights and desires of the minority, however small it may be.

MR. N. KUMARAN: Would it not be more consistent to exempt individuals, instead of families, so far as intestate succession is concerned?

MR. JOSEPH PANJIKARAN: So far as individuals are concerned, it is the family, the wife and children, that are benefited and there is some force in that question.

MR. A. HOOGEWERF: I wish to know whether, if the wishes of the minority are to be respected, it is possible to make any advance in social legislation.

MR. JOSEPH PANJIKARAN: It is quite possible in the way in which it is proposed to be done. People who want to advance may do so; and those who want to remain where they are may be permitted to do so; so that it is possible, even in a case where there is difference of opinion, to advance in matters of social legislation.

MR. A. HOOGEWERF: Has that been the spirit with which we have been deciding the other sections of the bill?

MR. JOSEPH PANJIKARAN: I think so. I think the Council would do well to go back on its decisions if it has done anything wrong.

• Then again, I have one more word to say. When clause 15 was discussed, the representation made in this House was that, even if exemption was granted, there would be very few people who would stick to the *misradayam* system. I am now inclined to think that that representation is not true. The number of respectable *misradayees* who have come up to Trivandrum in connection with this controversy shows that this is a very important matter and that the major portion of the *misradayees* do not want this innovation.

MR. N. KUMARAN: May I know how many *misradayees* my friend happened to meet?

MR. JOSEPH PANJIKARAN: I think I saw about 150 of them yesterday. I did not count the exact number. Mr. Kumaran himself must have seen a good number of them. I never thought that Mr. Kumaran would put this question. I thought he was more serious.

MR. N. KUMARAN: There might have been many standing on the roads. I thought he might have mistaken some of them to be *misradayees*.

MR. A. HOOGEWERF: Is the member aware that a monster meeting was held and that counter-petitions were submitted to the members of this House? Most of the people present were graduates.

MR. JOSEPH PANJIKARAN: I must confess that one morning, when I came here, I saw a scrap of paper on my table. From that I am not prepared to conclude that there was any meeting or that there was any monster-meeting.

PRESIDENT: Let us pass on. There might or might not have been a meeting. I did not see anything on my table.

MR. JOSEPH PANJIKARAN: For the reasons stated above, I support the amendment of Mr. Subba Aiyar.

MR. V. SUBBA AIYAR: Sir, even now, there seems to be some misconception as to why I brought forward this amendment. When we legislate for a particular community, we take the general sense of the community, draft the bill and introduce it into the Legislative Council. At the same time, it is due to the members of the community who may be in the minority to allow their legitimate claim to continue the existing state of affairs. In other words, while the views of the majority are recognised and embodied in the bill, the views of such of them as want the existing state of affairs to continue are also to be respected. It is quite immaterial whether Mr. Paramesvaran is going to accept it or not. If we are satisfied that there are some members who do not want to go as far as the bill wants them to go, we must give them an opportunity to remain where they are.

MR. A. HOOGEWERF: Was not this matter threshed out by the Select Committee?

MR. V. SUBBA AIYAR: No. This aspect of the case did not suggest itself to the members. It was in the course of the discussion of the bill here that we have become alive to the defects in certain portions of the bill. Mr. Kumaran observed that there were at least some families who did not want partition at all. If so, let them satisfy themselves by taking advantage of the exception. It is for such cases that an enabling provision has been put in.

MR. A. GOVINDA MENON: Does my friend realise that this amendment is the very negation of the principle that the majority should not coerce the minority? For example, in a family of one hundred persons, if fifty-one are for remaining as *misradayees*, they can coerce the remaining forty-nine.

MR. V. SUBBA AIYAR: You cannot carry any principle to its utmost limits. We have to draw a line somewhere. Our aim is to make the law acceptable to the largest number possible. It may be that there are still some individuals who are not satisfied. But we cannot help it.

MR. A. HOOGEWERF: Suppose there are nine members in a family, five of them old women and four young graduates. If this amendment is passed, the five old women will be imposing their will upon the four young graduates. Would it be a desirable state of things?

MR. V. SUBBA AIYAR: Certainly.

[Mr. V. Subba Aiyar.]

With reference to the various objections to the clause, I may say as to the sub-clause that, when a *tarwad* wants partition, the majority of the members ought to decide whether partition should be had or not—

MR. N. KUMARAN: What harm is there in providing that the majority of each *thavazhee* should be consulted for the presentation of petitions for exemption?

MR. V. SUBBA AIYAR: If an amendment had been put in, I would have considered it.

With reference to the argument that an individual may be oppressed by the majority, where that individual happens to be an earning member—

MR. K. PARAMESVARAN PILLAI: I wish to know whether all of us have not come across *tarwads* where it is not easy to decide who the members of those *tarwads* are.

MR. V. SUBBA AIYAR: It would be ascertained as far as it is possible to do so. If the officer is satisfied that the majority are not members of the *tarwad*, he would not grant the exemption. He is the deciding authority.

MR. A. HOOGEWERF: Who is to decide?

PRESIDENT: Please read the amendment. The answer is in the amendment itself.

MR. P. K. NARAYANA PILLAI: I have to put a question. Mr. Subba Aiyar's amendment contemplates a declaration being made before the Dewan Peishkar or some such authority within six months of the passing of this regulation. How long is that particular declaration to continue unaffected? Supposing the majority becomes a minority during the interval, what is to be done in such cases?

MR. V. SUBBA AIYAR: There is sub-clause (2) which distinctly says, that, subsequently, if the majority of the family wants to have the exemption revoked, they can have it done.

I see the force of the argument that, in cases where, in a *tarwad* of 15 or 20, only one or two happen to be the earning members, there may be hardship. In such cases the earning member can only benefit himself by the application of the provision in regard to wills. If so, there is some difficulty. That has struck me only in the course of the discussion here. To make the law applicable to him no individual need apply. It is only when an exemption is considered necessary that an application need be made. I have re-drafted sub-clause (2). I fear it may lead to further discussion. If, however, the House will take an assurance from me that on a re-examination I will modify sub-clause (2) in the light of the criticism here, when the bill is finally read—

MR. P. K. NARAYANA PILLAI: Will the Council be able to move any amendment at the time of the final reading?

MR. V. SUBBA AIYAR: Government alone can move any amendment then.

PRESIDENT: You may, if you choose, propose a motion to have a proper amendment and discuss it afresh. Some member may move that the House should proceed to the next business.

MR. V. SUBBA AIYAR: We may stop the discussion of the bill here and continue it at the next meeting of the Council.

PRESIDENT: It is open to some member to move that the discussion may be postponed. But, Mr. Subba Aiyar, what is your difficulty in proceeding with it now?

MR. V. SUBBA AIYAR: The difficulty that I was referring to is this. If, in a *tarwad* of twenty-two members, twenty do not earn and two alone earn, the question will be whether the succession to the self-acquired property of the earning members is to be decided by the majority of the *tarwad*. It is to the interest of the twenty members to see that the provision in the bill in regard to intestate succession does not apply to their *tarwad*. In such cases, it is open to the earning member to execute a will. Then the question will be whether every man will be in a position to execute a will before his death.

MR. A. HOOGEWERF: I rise to a point of order. I beg to say that the proposed amendment should be distinctly and clearly placed before the House for discussion, so that we may know what the amendment is.

PRESIDENT: That is the difficulty that we are now experiencing. Some member in the House may have to move that the business be adjourned.

MR. G. PARAMESVARAN PILLAI: I move that the discussion of this bill be adjourned.

MR. M. N. PILLAI: I second it.

MR. P. K. NARAYANA PILLAI: I support the motion.

PRESIDENT: May I take it that the House accepts the motion?

MR. M. GOVINDAN: I oppose the motion. Now, we have reached the very end of the discussions of the Ezhava Bill. We have got just one provision more to get through and that provision has been almost thoroughly discussed. Another half an hour's sitting will finish the whole work. If we postpone it now, we have to wait for another three months. The volume of opposition, natural to any beneficial piece of legislation, from persons inclined to create opposition, will increase considerably in the meantime and the fate of the bill will practically be doomed. I appeal to the good sense of the House not to accept this proposition for adjournment, but to continue for half an hour more to finish this bill, and thereby confer a lasting benefit on the community concerned.

MR. K. P. RAMAN PILLAI: I second Mr. Govindan's proposition.

MR. N. KUMARAN: I also support it.

MR. K. PARAMESVARAN PILLAI: I oppose the motion of Mr. G. Paramesvaran Pillai, because we have spent a lot of time on this

[Rao Bahadur K. A. Krishna Aiyangar.]

exemption clause. It is after all only a question of drafting the particular provision in the manner in which Mr. Subba Aiyar wants it.

PRESIDENT: The House will have to sit without work while it is being drafted.

MR. G. PARAMESVARAN PILLAI: Before the question is put to the vote—

PRESIDENT: You have a right of reply.

MR. K. PARAMESVARAN PILLAI: If it is adjourned, it may go on to the next year.

MR. G. PARAMESVARAN PILLAI: Then I withdraw the motion.

MR. V. SUBBA AIYAR: In the place of sub-clause 2, I would put in the following:

(2) On an application made by (i) the individual member or (ii) the majority of the members of the *tarwad* exempted under sub-section (1) the Government may, after making such enquiry as may be necessary, and after being satisfied as to the truth of the application, revoke such exemption by a notification in the Government Gazette.

MR. N. KUMARAN: May I put a question? Is there any provision for giving notice to the other members of a *tarwad* for the presentation of this petition? Otherwise they may not know of it.

MR. V. SUBBA AIYAR: I will explain what this amendment is. In the case of an individual, he will not apply for exemption against his will. Unless he wants to benefit the *seshakaran*, he will not apply for exemption at all. But behind his back the majority of the *tarwad* may apply and get exemption.

MR. P. K. NARAYANA PILLAI: Has the expression "Ezhava" been changed into "follower of *misradayam*?"

MR. T. K. VELU PILLAI: Considering the fact that no *marumakkathayee* has opposed it, would it not be better to put in "*misradayee*" also.

RAO BAHADUR K. V. RANGSWAMI AIYANGAR: Will Mr. Subba Aiyar explain the effect of his proposal?

MR. V. SUBBA AIYAR: So far as partition is concerned, the point urged is about a *tarwad* where there are 22 members, 20 of whom do not earn, while the other two alone are earning. The question is about the succession to the self-acquired property of the two earning members. It may be that all the twenty join together, form the majority and get themselves exempted against the will or behind the back of the actually earning members. In such cases, the acquirer should see that his acquisition goes to the person he is interested in.

RAO BAHADUR K. A. KRISHNA AIYANGAR: May I suggest that the amendment may be adopted as it stands and that another

clause, "Notwithstanding the provisions herein contained....." be put in.

MR. V. SUBBA AIYAR: That is only if an exemption is made. If no exemption is made, the individual's property will go to his wife and children.

RAO BAHADUR K. A. KRISHNA AIYANGAR: If no exemption is made, all the self-acquired property of a particular individual will go to his wife and children on his death. The individual apparently wants to prevent it. If so, he can do it by testament. In some cases, it may not be possible for him to make a testament. In such cases, should he not have the opportunity of getting his property exempted from the operation of clause 15, so that one-half may go to his wife and children and the other half to his *thavazhee*? In fact all that he is anxious to get exempted is the particular property belonging to him exclusively.

PRESIDENT: You are contemplating a case where there is no conflict of interest.

RAO BAHADUR K. A. KRISHNA AIYANGAR: When a *tarwad* has no interest in the self-acquired property of an individual, why should the majority of members of that *tarwad* go before some officer appointed by Government asking for the exemption of a particular individual? As was pointed out by my friend, it is very unnatural for the majority who will be benefited by the man continuing under the existing law to allow the individual to get himself exempted. In fact it might lead to the free disposal of the property after his death. I am prepared to withdraw my suggestion if Mr. Subba Aiyar thinks that there is no legal defect in his suggestion.

MR. V. SUBBA AIYAR: In the case of an individual no exemption need be sought for, because in his case there is no conflict of interest and the majority will join with him.

MR. A. HOOGEWERF: I should like to know what is the difference between the amendment brought forward by Mr. Rangaswami Aiyangar, drafted by Mr. Subba Aiyar himself and rejected by this House, and the amendment now brought forward by Mr. Subba Aiyar.

PRESIDENT: Mr. Rangaswami Aiyangar's amendment is in regard to clause 15 alone.

MR. M. GOVINDAN: If you will permit me to speak on this point for five minutes, I can make it clear because I know the difficulties of the community. The original amendment of Mr. Subba Aiyar is a confused one.

PRESIDENT: He has not told the House how he is going to alter his amendment.

MR. T. K. VELU PILLAI: I am for making this apply only to *misradayees*. The word "*misradayees*" may be added.

[Mr. K. C. Raja Raja Varma.]

PRESIDENT: You have already made that suggestion. It will be very much better if a motion for adjournment is made by some member. There is real difficulty.

MR. V. SUBBA AIYAR: Sir, I move that this discussion be postponed to this evening.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I further propose that this be taken up at 4 P. M.

PRESIDENT: If the House has no objection, we may take it up at 4 O'clock.

The question that the discussion of the Ezhava bill be postponed to 4 P. M. was put to the vote and carried.

THE HIGH COURT REGULATION AMENDMENT BILL

PRESIDENT: We will now pass on to the consideration of the Select Committee's report on the High Court Regulation Amendment Bill.

MR. V. SUBBA AIYAR: I beg to present the report of the Select Committee on the High Court Regulation Amendment Bill and move that the same be taken up for consideration.

MR. S. PARAMESVARA AIYAR: I second it.

PRESIDENT: There are no amendments to the preamble or to clauses 1 and 2. I take it that the House accepts them.

The question that the preamble and clauses 1 and 2 as settled by the Select Committee stand part of the bill was put and carried.

The preamble and clauses 1 and 2 were added to the bill.

Clause 3.

PRESIDENT: Mr. Raja Raja Varma, will you please move your amendment?

MR. K. C. RAJA RAJA VARMA: May I move my amendments (1) and (2) together? Both relate to clause 3. My notice was as follows:

(1) Substitute the words "not more than three" for the words "not less than three"; and

(2) add the following at the end of the clause:

"Provided that additional Judges not exceeding two may be appointed to the High Court for such period as may be required."

My amendment to clause 3 will be complete only by combining the two amendments.

PRESIDENT: I think you have withdrawn amendment (3). Now you want to combine the first two amendments. I see no harm in your doing it. You may do so.

MR. K. C. RAJA RAJA VARMA: Clause 3 of the bill lays down that the High Court shall consist of a Chief Justice and not less than three other judges. This clause therefore prescribes that the minimum